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BEN ZION BIRMAN

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BEN ZION BIRMAN,

Defendant.

CASE NO.: CR 18-00404-PA

DEFENDANT BEN ZION BIRMAN'S
SENTENCING POSITION

DATE: December 10, 2018

TIME: 8:30 a.m.

COURTROOM: 9A

Assigned for All Purposes To:
Honorable Perry Anderson

Defendant BEN ZION BIRMAN, by and through his attorney of record, Dennis L. Perez of Hochman Salkin Toscher Perez P.C., hereby submits his sentencing position. For the reasons that follow, and as more fully set forth in the accompanying Memorandum of Points and Authorities, we respectfully urge the Court to impose a non-custodial sentence:

1. Ben Zion Birman has no objections to the Presentence Investigation Report ("PSR").

2. The PSR calculates an advisory guideline range at a total offense level of 4 with the range of 0-6 months.

3. The government recommends a sentence at the “low end of the guidelines range,” which would result in a non-custodial sentence.

4. Mr. Birman, age 63, has an otherwise unblemished record, poses no meaningful threat of recidivism and has made a substantial payment on a civil penalty relating to his failure to disclose his foreign account, making incarceration unnecessary to serve the ends of justice in this case.

5. Mr. Birman has paid \$250,000 to the Department of Justice as a partial payment on a civil FBAR penalty of \$513,517.81.

Taking into consideration the advisory guidelines, Mr. Birman respectfully requests that the Court impose a noncustodial sentence as “a sentence sufficient but not greater than necessary,” *Kimbrough v. United States*, 552 U.S. 85, 101 (2007) (quoting 18 U.S.C. §3553(a)), to comply with the purposes of sentencing in this case.

Respectfully submitted,

DATED: December 3, 2018

HOCHMAN SALKIN
TOSCHER PEREZ P.C.

By: /s/ Dennis L. Perez
DENNIS L. PEREZ
Attorneys for Defendant
BEN ZION BIRMAN

MEMORANDUM OF POINTS AND AUTHORITIES**I.****INTRODUCTION**

We respectfully submit this memorandum on behalf of Ben Zion Birman in anticipation of his sentencing. The PSR concludes that the total offense level in this case should be level 4, with Criminal History of I, and the government recommends a sentence at the low end of the guidelines sentencing range, which is 0-6 months. We respectfully urge the Court to follow the government's recommendation for the reasons set forth in this memorandum.

II.**HISTORY AND CHARACTERISTICS OF MR. BIRMAN**

The PSR discusses Mr. Birman's personal history and characteristics at ¶¶ 39-48. As set forth in the PSR, Mr. Birman has led a law-abiding life, with the exception of the conduct involved in this case. As will be stated below, Mr. Birman is known in his community as an outstanding family man, a loyal friend and someone who is respected for his integrity as a businessman and is generous to persons in need in his community.

A. Mr. Birman Accepts Responsibility for His Actions and Is Remorseful for What He Has Done

Without any doubt, Mr. Birman recognizes the seriousness of his wrongdoing and offers his unequivocal apology to the Court:

First and foremost, I would like to express my heartfelt apology to this Court and to the United States for the amount of effort and resources that it has taken to bring this matter to a close. My actions of failing to disclose to the Internal Revenue Service a foreign account I maintained in Luxembourg, haunt me daily, as I reflect on the stress, shame and pain that I have caused my loved ones. I am deeply ashamed for my choices and personally mortified at the seriousness of what I did.

* * * *

Ultimately, my poor choices were entirely my own; words cannot express how truly sorry I am. I am committed to paying my debts, both punitively and fiscally, to bring this chapter of my life to a close. My actions were wrong and I apologize to the Court, to my family and to all of those who have been impacted by my poor choices.

During the presentence investigation process Mr. Birman submitted to the probation officer, Mr. Birman's statement accepting responsibility for his actions. An excerpt of this statement is cited in ¶20 of the PSR:

I am very sorry for the acts that I have committed that have led me to plead guilty in this case. I know I should have disclosed to the Internal Revenue Service a foreign account I maintained in Luxembourg but chose not to disclose it. The money in my account came from my parents, who were Holocaust survivors, and citizens and residents of Israel until they passed away several years ago. As my parents grew older, they gave gifts to my three older brothers and to me. I deposited the money that was given to me in an account I opened at Bank Leumi in Israel and . . . My actions were wrong and I apologize to the Court and to my family.

B. Mr. Birman's Actions in this Case Are An Aberration from His True Character Which is Based on Traditional Values and His Strong Sense of Integrity

Mr. Birman, one of four sons of Holocaust survivors, was born and raised in Israel. He served admirably in the Israeli Defense Forces from 1973 to 1976, participating in the Yom Kippur war and experiencing significant combat experiences and other atrocities. He was honorably discharged at the rank of Sergeant. He explains the teachings of his parents:

As you will read in the letters from my family and friends, I was raised in a solid family with "Old World" values. I have always considered myself exceptionally strong mentally; I have prided myself on my strong ethical values and sense of integrity. Being raised by my

1 parents, who were Holocaust survivors, I learned to
 2 overcome life challenges; I was taught that even when
 3 presented with the most horrific life circumstances, we
 4 are faced with the opportunities for personal growth. I
 5 learned to be of service to others and always reached out
 6 to those in need with the helping hand and an open heart.
 7 I raised three beautiful children, teaching each of them
 8 that “your good name is the ONLY thing that you take
 9 with you to your grave.” As I reflect on the events that
 10 ensued leading me to stand in this court of law, I know I
 11 have failed myself and the people who I love most.

12 Mr. Birman describes the money that was maintained in the foreign account
 13 at the Israeli Bank Leumi, which he failed to disclose to the Internal Revenue
 14 Service:

15 The money in my account came from my parents,
 16 Holocaust survivors who fought to build their lives after
 17 being stripped of everything they owned and losing their
 18 loved ones to the horrors of anti-semitic discrimination.
 19 They were citizens and residents of Israel until they
 20 passed away several years ago. As my parents grew
 21 older, they gave gifts to my three older brothers and to
 22 me. My parents wanted to ensure that after their death,
 23 the “State” would not take everything they owned as had
 24 occurred in Nazi Germany. I deposited the money that
 25 was given to me in an account I opened at Bank Leumi in
 26 Israel and later moved the money to Luxembourg, when I
 27 used it to facilitate my and my brother’s business.

28 Mr. Birman’s daughter, a psychologist and Chief of Suicide Prevention for
 the greater Los Angeles V.A. Medical Center, in a heartfelt letter, describes her
 father:

Most of all, it was my father’s guidance which led to my
 earnest desire to help people. My father taught me that
 when someone reaches out for a helping hand, you
 always extend your hand to them. I look back and smile
 at my childhood, reflecting on the life lessons I learned
 completely unaware of the learning that was taking place
 at the time. Growing up, I recall every Halloween
 spending hours “Trick-or-Treating” in the neighborhood
 collecting bags filled with delicious candy. On the
 weekend following Halloween, my parents would take
 my brothers and I to downtown Los Angeles and we

1 would share our Halloween candy with the homeless
 2 individuals living on the streets of downtown L.A. It is
 3 no surprise that I spend the majority of my career
 4 working in homeless clinics, trying to help those who
 5 have fallen between the cracks of our system.

6 I find myself emotional as I write this letter. The man
 7 who raised me is not well reflected by the man who
 8 stands before you for sentencing. I was raised by a
 9 dedicated father; a man who worked hard his entire life
 10 to provide for his family. My mother always joked that if
 11 she did not buy him new clothes, he would still be
 12 dressed in clothes from the 70s and sleeping on a ripped
 13 mattress on the floor; his needs were minimal, his wants
 14 simple. His sense of meaning and efficacy was in his
 15 ability to provide for his family.

16 * * * *

17 To me, my father is the man who has sat through every
 18 graduation, arriving early to save seats in the first row. I
 19 can picture him sitting proud and excited, uncomfortably
 20 sweating in the heat of the SoCal summer. My father is a
 21 man who took offense to my desire to pay my way
 22 through my doctoral program, explaining to me that
 23 “paying for any school [I] choose to attend is what [he]
 24 has worked his entire life for.” Despite, his demeanor,
 25 my father is a man whose eyes light up every time his
 26 grandchildren walk through the door; they certainly have
 27 him wrapped around their little fingers.

28 Mr. Birman’s character is described by his business partner and trusted
 personal friend of over 30 years, David G. Hirth:

... In my private and business interactions I have found
 Benny to be a profoundly honest individual with the
 utmost integrity. I know from personal experience how
 helpful and generous he has been to his former
 employees and other business associates.

In addition, he is an outstanding family man to his wife
 and children. He has supported his elderly parents for
 more than 30 years as well as his older brother who has
 suffered from a developmental disability. He often
 visited his parents overseas, and they completely relied
 on him for financial and moral support. I am also aware
 of numerous instances of Benny lending funds to his

1 friends, family and business associates, knowing full well
2 that he might never be repaid. He did these deeds with a
3 gracious attitude to help those in who were in financial
need and not for his own financial gain.

4 I can categorically state that he is one of the most
5 generous and unselfish person I have ever met. There
6 were many less fortunate individuals he helped because
7 they knew he was the person of last resort who would
8 help them. I fully understand that he is charged with a
9 serious offense. However, I wholeheartedly believe that
that this offense does not reflect the man he really is. I
have always known him to be a law abiding and
respected member of our community, who has supported
various charities and his religious group.

10 Mary Harel who is related to Mr. Birman's wife states:

11 I have known Mr. Birman for over 20 years, as he is
12 married to my first cousin. Mr. Birman has always been
13 very supportive, warm, caring and generous person that
14 I have often looked to for advice. When my parents
15 tragically passed away 11 years ago on the same day, Mr.
16 Birman stepped in to help my family and I in making the
difficult, costly and painstaking task of their funeral and
burial. He did this with great compassion and out of the
pure goodness of heart.

17 Mr. Yoni Cohen, Mr. Birman's friend for 40 years explains how Mr.
18 Birman's volunteer spirit led Mr. Cohen to also volunteer for a charitable event:

19 . . . I can attest to the fact that he is an involved member
20 of the greater Los Angeles community and is a person
21 who has contributed much to his community through his
22 generous acts. I have found him to be a person who
23 never turns down the opportunity to help those in need. I
24 know this because he has been my mentor in promoting
25 fundraising for worthy causes. I have been involved with
26 the Jewish community as an entertainer, and together
27 with Mr. Ben Zion, we have volunteered our services and
28 money to help individuals, families, as well as people
with serious illnesses that need special care, which can
only be provided through extremely expensive
treatments, both here and abroad. Mr. Ben Zion gave me
the opportunity to follow his example, which led me to
volunteer to perform at fundraising events. He provided
the financial support and the follow-up to secure great

1 results. I have never heard of a time when he turned
2 down any opportunity to help those in need. On the
3 contrary, he always does a lot more than what is required
4 or expected. Everyone in this town knows him as
5 someone who is ready to serve others in need.

6 Amnon Mizrahi, a close friend of Mr. Birman for 35 years, states:

7 Mr. Birman is an exceptionally generous man. He has
8 always opened up his home on Sabbath dinners and
9 Jewish holidays to anyone and everyone in the
10 community who did not have a place to go. He would
11 see to it that no one spent holidays alone and ensured that
12 everyone was surrounded by loved ones. I have attended
13 dozens of holidays and Sabbath dinners at Mr. Birman's
14 home along with scores of family and friends. It was not
15 uncommon to see Mr. Birman hosting and feeding nearly
16 one hundred people on these occasions. Mr. Birman
17 never turned anybody away.

18 Menashe Gamliel, Mr. Birman's friend for over 30 years, further attests to
19 Mr. Birman's generosity:

20 Mr. Birman has been a trusted friend and business
21 associate of mine for over 30 years. I have witnessed
22 first hand what an honest, generous and charitable man
23 he is. Mr. Birman is highly respected as a virtuous
24 businessman, but more importantly, as a loyal friend and
25 member of the community. He offers assistance to
26 countless friends, acquaintances and even strangers in
27 need. He is constantly finding ways to help and
28 encourages myself and others to contribute as well. His
offerings are genuine and given without any expectation
of personal gain or return.

In my personal friendship and business relationship with
Ben Zion, I have always known him to be trustworthy
and law-abiding. I have always believed in his integrity
and known his word to be reliable. Furthermore, Ben
Zion is a devoted husband, father, grandfather and family
man. He prioritizes the well-being of his family and
friends before his own.

C. **Mr. Birman's Medical Condition Should Be Taken Into Account**
In Determining a Non-Custodial Sentence in this Case

In October 2009 Mr. Birman was diagnosed with chronic Lymphocytic Leukemia which required treatment of intense chemotherapy and is closely monitored to the current day. Mr. Birman's treating physician, Sepehr Rokhsar, M.D., describes Mr. Birman's medical history and condition in his letter:

This letter is to apprise you that Mr. Benzion Birman [DOB: 12/16/54] has been followed in our office [since October 2009] for management of chronic lymphocytic leukemia [CLL] – an incurable condition with median survival >10 years.

Between the years 2009-2015, Mr. Birman was observationally followed [every 3 months] with routine monitoring of his blood count and assessment for adenopathy. He was then deemed to be [sufficiently] symptomatic and necessitating treatment, for which he completed a six-month course of intense chemotherapy with Rituximab and Bendamustine.

Throughout the course of his disease diagnosis and treatment, Mr. Birman reported marked symptoms, particularly those of depressed mood, anxiety, isolation and withdrawal, as well as [other] psychosocial and interpersonal difficulties. His symptom severity was relatedly impacted by life stressors and financial concerns.

Mr. Birman continues to be followed in our office in quarterly intervals. While his treatment response has been excellent, it is anticipated that his disease will relapse at which time he will require additional treatment.

Mr. Birman is thankful that his leukemia is in remission but given his physician's description of his condition, Mr. Birman's health continues to be a concern.

III.

CONCLUSION

Mr. Birman deeply regrets his criminal conduct and apologizes to the Court and to his family for his actions. He respectfully requests the Court to impose a non-custodial sentence.

Respectfully submitted,

Dated: December 3, 2018

HOCHMAN, SALKIN, TOSCHER, PEREZ, P.C.

By: /s/ Dennis L. Perez
DENNIS L. PEREZ
Attorney for Defendant
Ben Zion Birman

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 9150 Wilshire Boulevard, Suite 300, Beverly Hills, California 90212.

On December 3, 2018 I served the foregoing documents described as **DEFENDANT BEN ZION BIRMAN'S SENTENCING POSITION** in the manner indicated below, on the following interested parties in this action:

Leslie Goemaat, Esq.
 United States Department of Justice
 601 D Street, NW
 Room 7024
 Washington, DC 20044
Leslie.A.Goemaat@us.doj.com

X (BY ELECTRONIC MAIL) I caused such document(s) to be delivered by email to the email address(es) of the interested parties indicated above.

(BY U.S. MAIL) I caused such envelope(s) to be addressed as indicated above and deposited in the United States mail at Beverly Hills, California, with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

(VIA FACSIMILE) I caused to be delivered such document(s) to the interested parties indicated above via facsimile transmission to the fax numbers indicated above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 3, 2018, at Beverly Hills, California.

/s/ Dennis L. Perez

 DENNIS L. PEREZ

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